

**STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION MEETING
SACRAMENTO, CALIFORNIA
JUNE 13, 2007**

In attendance: William Zachry, Chair, and Commission Members Darlyn Regan, Jiles Smith, Chuck Center, Carol Schatz, Lilia Garcia and James Little.

Others present: Dale Banda, Deputy Commissioner, Enforcement Branch, California Department of Insurance, Rick Plein, Bureau Chief, Workers' Compensation Program, and Vanessa Himelblau, Senior Staff Counsel, Legal Division.

Chair William Zachry opened the meeting by introducing the two newest members. Mr. James Little, Chairman, President and CEO of Employers Direct Insurance Company and Lilia Garcia, Executive Director of Maintenance Cooperation Trust Fund.

Motion

Commission member Darlyn Regan made a motion to approve the March 1, 2007 meeting minutes as submitted.

The motion was seconded by Commissioner Schatz.

Action

The motion passed unanimously.

Chair William Zachry reported that with the pharmacy repackaging regulations in effect, as of March 1, 2007, California employers should see significant savings. "Anecdotally, I have heard from bill review companies and employers, that they're already seeing an improvement in their costs in that area, so I think this is a very positive item," stated Zachry.

Mr. Mark Webb, Vice President of Governmental Relations with Employers Direct Insurance Company reported on Senate Bill 869. This legislation establishes a more rigorous enforcement mechanism within the Department of Industrial Relations (DIR). The new mechanism will assist DIR in identifying uninsured employers, and organize efforts between EDD, DWC, Labor Commissioners and the designated statistical agent for the purposes of insurance rating with CDI. Some employers report payroll but have no record of workers' compensation insurance.

Christine Baker, Executive Officer for the California Commission on Health and Safety and Workers' Compensation addressed the Commission. Ms. Baker gave a briefing on the study being conducted by Navigant Consulting on medical payment accuracy in the system, overpayments and underpayments. Since the focus of the study is payment for medical services, Navigant is only interested in injured worker cases in the Workers' Compensation Information System that have associated medical services paid during a

defined period. Navigant is gathering data and hopes to have all medical bill information by the end of July when one individual medical bill will be randomly selected for an in-depth analysis. Malcolm Sparrow, Professor of the Practice of Public Management at the John F. Kennedy School of Government, Harvard University was contracted to review each step of the sampling to ensure accuracy, adequacy, and objectivity so that the methodology is solid and reliable.

Chairman Zachry thanked Commissioner Poizner for his support and for the letters sent by his department encouraging response from the insurance industry. Zachry also thanked Mark Johnson and John Ray for their letters requesting information from the self-insured community.

Commission member Carol Schatz raised the issue as to when the study would be completed. Chairman Zachry indicated that the study should be ready by mid-spring.

Ms. Baker introduced Frank Neuhauser with the University of California at Berkeley. Mr. Neuhauser is under contract with the Commission on Health and Safety and Workers' Compensation (CHSWC), to conduct two studies.

Mr. Neuhauser reported, "The Commission asked me to review and analyze the extent to which there's underreporting of payroll for the purposes of setting premiums." Neuhauser reviewed a current population survey covering 5000 households in California each month. Then he compared the payroll reported by workers in the study by sorting them into specific class codes. Those results were compared to the information reported by insurers to the Workers' Compensation Rating Bureau. "I have to tell you the results are pretty striking," stated Neuhauser.

Also reviewed were the class codes that are split between high and low-wage workers. Again the impact is on the honest employers. Those employers that are trying to compete against employers that are cheating on their premiums and high-wage workers and high-wage employers are also paying higher premiums, due to misreporting by the dishonest employer.

Discussion continued among the members of the Commission and it was agreed that at the next meeting the FAC would vote on how to update and expand the research study. Commissioner Center added that the Commission cannot ignore the fact that legitimate employers are paying four times the rate of non-legitimate employers.

Deputy Commissioner Banda remarked that in terms of the department, it would be helpful to see if the studies could address a measurable way to determine how effective law enforcement and District Attorney prosecution are in a geographically focused enforcement.

Chairman Zachry reported on the Watsonville Law Center process: 1) working on the process to ensure that day laborers are able to obtain appropriate medical treatment for the legitimately injured worker. 2) Designing a plan to create a safety net with the

Uninsured Employers fund to provide benefits and, 3) to create an identification referral process for the agriculture industry for uninsured employers. At the September FAC meeting, Dori Rose Inda will provide a comprehensive update.

Fraud Division

Rick Plein, Bureau Chief presented a report on the department's Review Panel and the Insurance Commissioner's distribution of funding determination. Mr. Plein reported that for fiscal year 2007/08, \$25 million in new grant funds were available to the district attorneys for anti-fraud efforts in the Workers' Compensation Anti-Fraud Program.

On June 5, 2007, the district attorneys presented their funding requests and addressed questions and concerns from the Grant Review Panel. The Panel consisted of the following: Commissioner Jiles Smith and Commissioner Darlyn Regan representing the Fraud Assessment Commission, Dr. Glenn Shor, Department of Industrial Relations Designee, Donna Gallagher, a civilian expert in consumer crimes investigation who was appointed by the Insurance Commissioner; and Bureau Chief Plein representing the Fraud Division.

Each panel member reviewed and evaluated the applications for funding and provided their funding recommendation that were forwarded to the Insurance Commissioner. Their assessments were based on criteria consistent with the California Code of Regulations.

"We looked at their county plan, which contained their county problem and addressed the county problem as well as their strategies. Their performance in statistical analysis, current year-to-date and last fiscal year statistics were reviewed for productivity and continuity of the program. We also looked at carryover funds, how they were being used, and creativity of the County in attempting to achieve a balanced caseload, and the types and complexity of cases that were being worked," stated Bureau Chief Plein.

Overall this is a very labor intensive task as the Grant Review Panel had \$25 million available for distribution, with district attorney requests for \$27,876,059 in new funding and \$1,969,935 in carryover funding. Bureau Chief Plein submitted into the record a letter from Insurance Commissioner Poizner which noted that the determination for funding was based on the Panel's recommendation and the advice and consent of the Fraud Division as to the most effective distribution of monies. The Fraud Assessment Commission now takes action to give their advice and consent to the determination for funding.

Chairman Zachry raised the issue as to the experience of each member of the FAC had participating in the Grant Review Panel.

Commission member Jiles Smith commented that he was very enlightened and the review of the applications provided a new perspective on the complexities of the program.

Commission member Darlyn Regan noted that she appreciated all the time district attorneys spend in preparing the workers' compensation grant applications and supporting it with a verbal explanations so that the Panel can understand and fund appropriately.

Chairman Zachry remarked that he was personally appreciative of Donna Gallagher's participation on the Review Panel. "Her institutional memory of the process was wonderful in terms of helping to make the transition as we have new members on the Commission and this allowed for continuity of the process, if you will. So a personal thanks to Donna Gallagher," stated Zachry.

Motion

Commission member Regan made a motion to give advice on and consent to the Insurance Commissioner's determination for funding.

Commission member Chuck Center seconded the motion.

Action

Chairman Zachry asked if there were other public comments and being none he asked for the roll:

Ms. Schatz	Aye.
Mr. Smith	Aye.
Ms. Regan	Aye.
Mr. Center	Aye.
Mr. Little	Aye.
Ms. Garcia	Aye.

The motion passed.

Dale Banda, Deputy Commissioner Enforcement Branch updated the FAC on the legislative process involved in getting expenditure authority for the Department of Insurance, for the district attorneys and for the research study.

Deputy Commissioner Banda noted that the department must prepare a justification (budget change proposal) for the budget and submit it to the Legislature for analysis. Additionally, the Legislative Analyst Office (LAO) looks at the budget request along with the Department of Finance (Governor's Office). This past year the FAC voted for an increase of \$1.3 million for the Fraud Division and \$2.4 million in funding for the district attorneys. The final result is that the Legislature has granted two-year expenditure authority for the additional funding. The Legislature is most interested in the results of the workers' compensation research study, which should be finalized in the spring of 2008.

"I also want to thank Chairman Zachry who was involved in working with the Legislature, Commissioner Center for educating the staff and of course the district attorneys who were very much involved," noted Banda.

Commission member Center commented that it would be good to have the study in hand prior to the budget process next year. Also, Commission member Center recognized the newly appointed member, Lilia Garcia (Labor Representative). Ms. Garcia has a very powerful advocacy that will be helpful next year in this process.

Deputy Commissioner Banda presented an update on the Insurance Commissioner's Blue Ribbon Task Force. The Insurance Commissioner's Strategic Plan, which can be viewed on the Department's web site, states two specific workers' compensation areas: 1) reduction in workers' compensation fraud, and 2) how to accomplish the objective to be defined through the Task Force.

Deputy Commissioner Banda introduced John Standish, Bureau Chief and the coordinator of the Blue Ribbon Task Force. The members of the committee are: Mike Brown, Commissioner of the Highway Patrol, Bob Bryant, President and CEO of the National Insurance Crime Bureau, Steve Cooley, District Attorney of Los Angeles County, Bonnie Dumanis, District Attorney of San Diego County, The Honorable Harry Low, former Insurance Commissioner and Justice for the California Appellate Court, John McGuinness, Sheriff of Sacramento County, David Snowden, Chief of Police Beverly Hills, and Allan Zaremborg, President, California Chamber of Commerce.

District Attorneys

Gary Fagan, Supervising District Attorney San Bernardino County and co-Chair of the California District Attorney Association (CDAA) Insurance Fraud Sub-committee addressed the FAC.

On behalf of the grant funded district attorneys, Mr. Fagan remarked that overall DAs continue to see improvement in the grant application and the Review Panel process. The district attorneys would like the application to be a little more streamlined and believe that there is still some duplication in a few areas. The standard time frame to complete the Request-for-Application (RFA) is about three to four weeks.

CDAA will be sharing best practices and ideas within the Insurance Fraud sub-committee. "The Review Panel members wished there were more money to distribute I think, it was a long-running trend where the Review Panel always wants to give more money and fill requests, and the assessment doesn't reach that," stated Fagan. When the district attorneys come before the FAC in September the Commission will again be asked to consider the needs and requests prior to setting the aggregate.

"This year the funding distribution for counties was slow and this was brought to the attention of the Fraud Division," noted Fagan. "I've asked our Administrative Office, or Budget Office, to "flag" where there seem to be roadblocks. Whether it's in our Accounting Department or at the State Controller's Office, we need to identify where roadblocks are to measure the actual time frame," reported Banda.

Mr. Fagan raised the issue of the CDAA Insurance Fraud seminar in October. The seminar will be held the week of October 15, 2007 in Sacramento. The seminar will have

three tracks: 1) workers' compensation insurance fraud, 2) automobile and health and disability insurance fraud, and 3) investigator specific training.

Again this year, district attorneys were not able to find a legislator to sponsor a bill to increase the penalties for uninsured employers from just misdemeanors to wobblers. Some issues surrounding this concept are overcrowded prisons and the "three strikes" felony law.

Mr. Fagan also shared district attorney concerns that Senator Machado (Senate Banking, Finance and Insurance) and staff wanted to wait for the results of the Research Study before approving spending authority. The district attorneys requested that the FAC continue to inform and educate the Committee on the mechanisms of the funding process.

Commission member Schatz commented that it was disturbing to hear that it can take up to a month to complete the RFA. Ms. Schatz asked that Fraud Division staff review the application and provide input at the next FAC meeting.

Commission member Smith remarked that in reading the grant applications some were a pleasure while others were just a waste of time. Mr. Smith would like to see a sub-committee evaluate the grants and standardize them.

Chairman Zachry added that although it takes a lot of time to prepare the application, it is necessary to extensively evaluate the application in order to fairly and appropriately distribute the funding.

Rick Plein, Bureau Chief noted the steps taken by the Review Panelists. The process is in the California Code of Regulations which includes: Qualifications or the county's experience investigating and prosecuting workers' compensation fraud and each county's relationships with both public and private entities. The next area of review, the County Plan, includes each county addressing their specific problem, as well as their own strategy for fighting workers' compensation fraud. An evaluation is made of the county's performance, which includes statistical analysis of the current year to date, and last fiscal year's statistics which are reviewed for productivity and continuity of the program. Further analysis covers the county's carryover funds, how much and how does the county plan to utilize the carryover. Finally, is the county achieving a balanced caseload, and what are the types and complexity of cases being worked?

William Zachry, Chairman gave an overview of the issues for the next FAC meeting. The proposed agenda items are: 1) aggregate assessment (DA proposed budgets and Fraud Division funding request) 2) Legislative Update, 3) Third-Party Claims Administration and the question of fees and hidden fees. 4) Research Study Update, 5) Update on Insurance Commissioner's Blue Ribbon Task Force, 6) Fraud Division update on the RFA, and the expeditious distribution of grant funding and 7) Frank Neuhauser's recommendation as to how to expand the premium fraud study and the study of the payroll of the premium issues from 2003 to 2007.

Lilia Garcia, Executive Director of Maintenance Cooperation Trust Fund (MCTF) and newly appointed member to the Fraud Assessment Commission addressed the FAC. MCTF generally handles the underground economy and has worked with a few district attorneys.

Last week Ms. Garcia attended the Review Panel Meeting and commented, “I heard a representative from San Francisco make some comments about working with the day laborers, in promoting an initiative they had started. I want to encourage that,” remarked Ms. Garcia.

Mr. James Little noted that he had been involved with the FAC in the early 1990’s and sees the tremendous improvement in the Workers’ Compensation arena. Mr. Little was appreciative of the efforts of the district attorneys, law enforcement, the insurance industry and labor and the unrecorded savings that have resulted. “I think there’s a lot more productive work that could be done and I’m glad to be here,” stated Mr. Little.

Public Comments

Chairman Zachry moved to the public comment portion of the agenda, while acknowledging that Commission member Chuck Center would be chairing the agenda item. However, no one came forward to speak.

With no further business to address, at 11:44 a.m., Chairman Zachry adjourned the FAC meeting.